



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 98-12-24

Served Dec 24, 1998

Issued by the Department of Transportation
on the 22nd of December, 1998

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Agreement Adopted by the Tariff Coordi- :
nating Conferences of the International : Docket OST-98-4607
Air Transport Association relating to :
TC31 passenger fares :
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ORDER

Various members of the International Air Transport Association (IATA) have filed an agreement with the Department under section 41309 of Title 49 of the United States Code (Code) and Part 303 of the Department's regulations. The agreement was adopted by mail vote. 1/

The agreement establishes fares between Niigata, Japan and points in Hawaii via the North or Central Pacific at the level, and under the same conditions, as fares between Nagoya and points in Hawaii. The fares would become effective only upon commencement of direct service between Niigata and any point in Hawaii.

We will approve the agreement. We generally do not exercise regulatory control over passenger fares and conditions in markets that are not directly served (See, for example, Orders 89-4-42, April 18, 1989, and 88-4-5, April 1, 1988). Based on our review of the information submitted and other relevant material, we conclude that the agreement will not result in fares that are unlawful or injurious to competition in the markets at issue. 2/

Pursuant to the authority duly assigned under the Department's Regulations, 14 CFR 385.13:

1. We do not find that the resolution in Docket OST-98-4607, as set forth below and which has direct application in foreign air transportation as defined by the Code, is adverse to the public interest, in violation of the Code, or likely to lessen competition substantially;

1/ IATA memorandum PTC31 Telex Mail Vote 965, filed with the Department on October 20, 1998.

2/ We will not impose our standard conditions regarding adherence to our Standard Foreign Fare Level (SFFL) criteria, since direct services have never been offered from Niigata to points in Hawaii. As a consequence, no SFFL has ever been established. Should direct service be commenced by any carrier, the initial normal economy fares it filed for such service would form the basis for the SFFL.

Docket OST-98-4607

TC31 North/Central Pacific Resolutions

<u>Resolution</u>	<u>Description</u>
010v	Special Passenger Amending Resolution To Introduce Fares Between Niigata And Points In Hawaii

2. This agreement is a product of the IATA tariff conference machinery, which the Department found to be anticompetitive but nevertheless accepted on foreign policy and comity grounds by Order 85-5-32, May 6, 1985. The Department found that important transportation needs were not obtainable by reasonably available alternative means having materially less anticompetitive effects. Antitrust immunity was automatically conferred upon these conferences because, where an anticompetitive agreement is approved in order to attain other objectives, such conferral is mandatory under 49 U.S.C. 41308.

Order 85-5-32 contemplates that the products of fare and rate conferences will be subject to individual scrutiny and will be approved, provided they are of a kind specifically sanctioned by Order 85-5-32 and are not adverse to the public interest or in violation of the Code. As with the underlying IATA conference machinery, upon approval of a conference agreement, immunity for that agreement must be conferred under the Code. Consequently, we will grant antitrust immunity to the agreement in Docket OST-98-4607, as set forth in finding paragraph 1 above, subject to previous conditions imposed.

ACCORDINGLY,

We approve and grant antitrust immunity to the agreement contained in Docket OST-98-4607, as set forth in finding paragraph one, subject, where applicable, to conditions previously imposed.

Persons entitled to petition the Department for review of this order, under 14 CFR 385.50, may file such petitions within ten days after the date of service of this order.

This order shall be effective and shall become the action of the Department of Transportation upon expiration of the above period, unless within such period a petition for review is filed or the Assistant Secretary for Policy and International Affairs gives notice that he will review this order on his own motion.

By:

Paul L. Gretch Director, Office of International
Aviation

(SEAL)

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